

INTERIM REPORT
OF THE
FORENSIC DIVERSION STUDY COMMITTEE

November 2006

Indiana Legislative Council 2006

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Forensic Diversion Committee

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Criminal Justice Institute

J. David Donahue, Com.
Department of Correction

Steve Johnson, Executive Director
Prosecuting Attorneys Council

Larry Landis, Exec. Dir
Public Defenders' Council

Mitch Roob, Secretary
Family and Social Services Adm

Honorable Randall T. Shepard
Chief Justice of Indiana

Staff: K.C. Norwalk, Staff Attorney, Legislative Services Agency
Andy Hedges, Staff Attorney, Legislative Services Agency
Mark Goodpastor, Fiscal Analyst, Legislative Services Agency
James M. Hmurovich, Indiana Criminal Justice Institute

I. Statutory and Legislative Council Directive:

The Indiana General Assembly enacted Public Law 85-13 (2004) directing the 15 member Committee to do the following:

- (1) Evaluate the effectiveness and appropriateness of forensic diversion programs within Indiana and in other jurisdictions; and
- (2) Review the adequacy of funding provided for forensic diversion programs.

II. Introduction

The Committee met three times during the 2006 interim to study the issues of forensic diversion:

- September 19, 2006
- October 10, 2006
- October 18, 2006:

III. Summary of the Work:

The following is a summary of the Committee's work. The minutes of each meeting of the Committee and this interim report are available at www.IN.gov/cji/media/FDMinutes.html

The first meeting was held at the State House on September 19, 2006. The Committee discussed the issues that would be presented during the interim meetings as well as a recent case accepted by the Indiana Supreme Court on transfer entitled *Ruble v State*, concerning whether forensic diversion is ***mandatory*** for an eligible offender. An update of the Department of Correction's forensic diversion pilots also was presented.

The second meeting was held at the State House on October 10, 2006. The Committee discussed PD 3110 which was a result of the discussion

concerning *Ruble v State*. The Committee approved legislation as contained in PD 3110 on a roll call vote. Public assistance eligibility for offenders who completed a treatment program as presented in HB 1125 from a prior legislative session also was discussed. The Committee approved legislation containing modifications of HB 1125 on a roll call vote. At this meeting the changes discussed with the prior house bill became the basis for PD 3447.

The third meeting of the Committee was held at the State House on October 18, 2006. The Committee discussed the Memorandum of Agreement between the Department of Correction and the Family and Social Services Administration that addressed how an offender being released from state custody could apply for public assistance benefits and the preliminary draft of a bill on the same topic. The discussion of financing for forensic diversion services also was held as well as discussion of the interim report.

IV. Summary of the Testimony:

The first meeting of the Committee was held on September 19, 2006 and focused on TANF eligibility for offenders who completed a treatment program, and the forensic diversion pilots funded by the Department of Correction.

Ruble v State:

Committee Member Steve Johnson provided an overview and the background for this case. It involves the issue as to whether a defendant *must* be entered into a forensic diversion program *if* the defendant qualifies for the program. The case recently has been accepted for transfer by the Indiana Supreme Court and oral arguments are scheduled for November 21, 2006. This action vacates the lower court's decision. A discussion was held about Preliminary Draft 3110 that previously had been drafted which would provide more clarity of legislative intent in the law. Senator Long suggested several changes to the preliminary draft and made a motion for adoption. A second was received from Steve Johnson and the Committee voted 13-0 to accept the preliminary draft with the suggested modifications.

Update on the Forensic Diversion Pilots:

Deana McMurray, Director of Community Corrections, Indiana Department of Correction, provided an overview of the forensic diversion pilots. The purpose of the pilots is to divert offenders with co-occurring mental health

disorder and substance abuse issues from jails and prison. Seven pilots were funded by the Department of Correction at a cost of approximately \$766,000 in Allen, Bartholomew, Lake, LaPorte, Shelby, St. Joseph and Tippecanoe Counties. In the past 2 years, 500 offenders have been screened and 302 are in a treatment program. Currently, Indiana University is evaluating the pilots in conjunction with the Department of Correction and the Family and Social Services Agency. The Chair requested that upon completion of the study, the issue be placed on an agenda of the Committee.

A discussion was held among the committee members about: a) the importance of recognizing treatment for both the co-occurrence of mental health and substance abuse issues; b) that any evaluation study should measure not only post treatment results, but results and outcomes while an offender is in treatment; c) the per person cost of services, d) the selection and use of assessment tools; and e) the difficulty in coordinating payment for services especially when mental health issues are the preliminary (and or primary) diagnosis. The discussion led to another review of Preliminary Draft 3110. The committee decided that participants could have either mental health or substance abuse issues. The motion to make the changes was made by George Brenner and the second was made by David Shaheed. The Committee voted 13-0 to accept the changes.

Meeting two was held on October 10, 2006 and continued a discussion of TANF eligibility for offenders who completed a treatment program and initiated a discussion on the financing of forensic diversion services.

TANF Eligibility for Offender Who Complete a Treatment Program:

Committee Members Steve Johnson provided his observations and a summary of HB 1125 that had been introduced in the 2005 legislative session. The bill had been a work product of the Forensic Diversion Committee and allows an individual convicted of substance abuse crimes to obtain cash assistance benefits. Assistance of this type to offenders is considered to be an issue of “public benefit” and “public safety”, not as a “hand-out” to a former convicted person. The assistance has been viewed as a means to provide a transitioning offender with the tools needed to successfully complete reentry to the community.

A discussion among the Committee Members focused on the following suggested modification to HB 1125:

- Substance abuse treatment should be provided by an addiction service program or a provider certified by the Division of Mental Health and Addiction;
- Services are available to an offender with mental health *or* drug treatment;
- Limitation of benefits to 12 months; and,
- The importance of the Family and Social Service Administration developing an application and eligibility determination process that provides services to offenders as soon as possible after custodial release.

The Committee approved legislation to accept changes to HB 1125 in a roll call vote.

Financing of Forensic Diversion Services:

Committee member Larry Landis provided a summary and background on the history of the current forensic diversion pilots funded by the Department of Correction. Currently, any county receiving community corrections funds are required to develop a forensic diversion plan; there is no requirement that the plan be implemented. Approximately \$700,000 per year for two years was allocated for seven pilots through community corrections funding. Mr. Landis noted that prior attempts to raise alcohol taxes in 2003 and 2005 to fund forensic diversion failed in the legislature. He further observed that the concept of forensic diversion is sound public policy and should be viewed as both “crime prevention” and “crime control” because of the potential impact to reduce recidivism.

Deana McMurray, the Director of Community Corrections for the Department of Correction identified four options for expansion of forensic diversion that included additional funding projected upon:

- Existing pilot project outcomes (difficult due to the variation of programs from county to county);
- The Division of Mental Health and Addictions Assertive Community Treatment rate;
- Forensic Diversion plans on file for all community corrections counties (difficult because not all plans included a budget); and,
- Department of Correction commitments.

Discussion among the committee members supported the following suggestions:

- Adequate funding, without passing costs onto the county should be reviewed constantly during the public policy discussion;
- A per person cost should include: a) services; b) pre-assessment; c) individual treatment; and d) services for dually diagnosed offenders;
- Administrative costs should be considered and standardized;
- A template for preparing a budget should be developed and adopted to promote consistency;
- Metrics must be developed or agreed upon that allows for comparable evaluation of program costs, as well as for how the funding was used and its effectiveness; and,
- Administrative costs should be kept as low as possible to ensure the greatest degree of funding for direct services.

A follow-up discussion was held as to which agency should be the “lead” agency for funding that would promote the greatest degree of accountability and ability to leverage state, local and federal funds.

The CEO of Southlake Mental Health Center, Lee Strawhun, provided his observations about the success of the forensic diversion program in Lake County. He also stated his observation on the importance of developing a public policy on forensic diversion that provides an adequate and continuous revenue source and quality services. The Chair recognized the support for an alcohol tax increase to support forensic diversion by Lisa Hutcheson, the Director of the Indiana Coalition to Reduce Underage Drinking, and Dee Owens, the Director of the Alcohol-Drug Information Center at Indiana University. The Chair invited both individuals the opportunity to provide information to the Committee staff for education of the committee members on this issue.

Meeting three was held on October 18, 2006 and finalized the discussion of TANF eligibility of an offender who completed a treatment program and continued the discussion about financing of forensic diversion services. The interim report also was reviewed and discussed.

TANF Eligibility and Memorandum Agreement between the Department of Correction and the Family and Social Services Administration:

The Committee discussed the Memorandum of Agreement between the Department of Correction and the Family and Social Services Administration that addressed how an offender being released from state custody could apply for public assistance benefits. The Memorandum has been approved and focuses on a more seamless, efficient manner in which an offender applies for

benefits prior to release to the community. A discussion among the Committee members was held that focused on what types of programs/situations offenders often are released to, and how that may impact eligibility for Medicaid, food stamps and/or Temporary Assistance for Needy Families (TANF, i.e., cash assistance). The Committee then considered Preliminary Draft 3447, (formerly referenced in Committee Meetings as HB 1125 from the 2005 Legislative Session) and approved the draft for legislation.

Financing of Forensic Diversion Services:

The Chair initiated the discussion concerning financing of forensic diversion services with a question as to whether the Committee would be willing to undertake such a resolution. It was requested and suggested that a) HEA 1437-2004 requires the Committee to “review the adequacy of funding provided for forensic diversion programs” and b) suggested that a vehicle to receive such appropriations exists in IC 11-12-3.7-13, (Forensic Diversion Program account) and that section (h) be added to the statute that states, “There is annually appropriated to the department from the account an amount sufficient to carry out the purposes of this chapter”.

A discussion was held concerning the methodology to determine a projected appropriation using information provide at the last meeting with information collated by the Department of Correction and the Division of Mental Health and Addictions. The Chair stated that the Committee remains in effect until December 31, 2007 and asked for volunteers from the Committee to establish a work group to determine an estimated fiscal impact to fund services. Members of the work group include Judge Felts, Judge Shaheed, Larry Landis, Cathy Boggs and Deana McMurray. A consensus was reached that the focus of the work group should be on the methodology and factual basis to determine the fiscal impact and not the source of the revenue.

V. Committee Findings and Recommendations:

The committee made no findings of fact. The Committee made the following recommendations:

- *PD 3110* provides legislative clarity to an offender’s admission to a forensic diversion program once found eligible. The Committee approved the draft by a roll call vote, 13-0

- ***PD 3447*** allows for an offender's eligibility for public assistance upon completion of a treatment program. The Committee approved the draft by a roll call of 13-0.
- ***The Interim Report*** was approved on a roll call vote, 13-0. (Note: The report contains, upon separate motion and roll call vote of the Committee a statement that, "*The Forensic Diversion Study Committee finds that the major hurdle for the effective development of forensic diversion programs, to meet the legislative policy that all counties adequately develop and execute forensic diversion programs, is funding. The Forensic Diversion Study Committee also finds that forensic diversion programs are a vital part of the State's policy to promote public safety, reduce crime, and fight recidivism. The Forensic Diversion Study Committee recommends that the General Assembly provide adequate funding to the forensic diversion account and to county forensic diversion programs.*"

VI. Witness List:

Lisa Hutcheson, Director of the Indiana Coalition to Reduce Underage Drinking

Deana McMurray, Director of Community Corrections, Department of Correction

Dee Owens, Director of the Alcohol-Drug Information Center at Indiana University

Lee Strawhun, CEO of Southlake Mental Health Center, Merrillville, Indiana

IV. Final Report:

The committee is required to file a final report with the Legislative Council by November 1, 2007.